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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,432	01/06/2004	Claude R. Allen	3830-13	3219

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EXAMINER
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SHRIVER II, JAMES A

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/751,432

Applicant(s)

ALLEN ET AL.

Examiner

J. Allen Shriver

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/6/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's submittal of an amendment was received September 29, 2004, wherein claim 24 was amended.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 23, 26-27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck (US Patent 2,405,636).** Beck discloses a hauler vehicle (10) for mining operations comprising a vehicle frame (11) coupleable with a source of motive power (45); and a conveyor (20) centrally disposed and coupled with the vehicle frame, wherein the vehicle frame and conveyor define a receiving end and a discharge end (See Fig. 1), and wherein the discharge end has a substantially fixed height (the specification does not disclose the discharge end of the conveyor being height adjustable); **[claim 26]** wherein the discharge end comprises a discharge boom integrated into the vehicle frame defining a one-piece frame construction (the drawings and specification does not disclose the discharge end of the conveyor being height adjustable, so Examiner has construed Beck's vehicle as only having a one-piece frame construction).

Regarding claims 27 and 29, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). In this case, Applicant has only claimed the method of constructing a hauler vehicle possessing all the components set forth in the previous apparatus claims, therefore, Beck inherently teaches constructing a hauler vehicle having the claimed components.

**4. Claims 23-24 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Brasher (US Patent 4,576,107).** Brasher discloses a hauler vehicle (10) for mining operations comprising a vehicle frame (12) coupleable with a source of motive power (this in an inherent component because without a source of motive power the vehicle could not operate); and a conveyor (50) centrally disposed and coupled with the vehicle frame, wherein the vehicle frame and conveyor define a receiving end (14) and a discharge end (16), and wherein the discharge end has a substantially fixed height (The discharge end is adjustable, however, it remains at a fixed height set by the operator); [claim 24] further comprising a full load indicator mechanism (See Figs. 2-3 and column 3, lines 10-27) at least partially adjacent the discharge end, the full load indicator mechanism providing an indication when the conveyor is substantially full.

Regarding claims 27 and 28, under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be

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assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986). In this case, Applicant has only claimed the method of constructing a hauler vehicle possessing all the components set forth in the previous apparatus claims, therefore, Brasher inherently teaches constructing a hauler vehicle having the claimed components.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brasher (US Patent 4,576,107) in view of Butler et al. (US Patent 5,873,431).** Brasher discloses the hauler vehicle as set forth above including a motor, but does not disclose wherein the source of motive power comprises the motor connected to a vehicle-mounted battery. Butler et al. discloses a hauler vehicle wherein the source of motive power comprises a motor (26) connected to a vehicle-mounted battery (27). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to provide a vehicle mounted battery to supply electricity to the motor disclosed in Brasher in view of the teaching of Butler et al. The motivation for doing so would have been to allow the vehicle to be completely autonomous, so that a separate electric power source is not needed to be connected to the hauler vehicle to provide electrical power for the motors.

***Response to Arguments***

7. Applicant's arguments filed September 29, 2004 have been fully considered but they are not persuasive. On page 5 of Applicant's remarks, Applicant argues that Beck does not the discharge end having a substantially fixed height, merely based on the fact that Beck does not disclose the nature of the discharge end in the Specification. However, because the specification does not set forth structural elements to hinge the discharge end and the fact that the drawings disclose the discharge end being fixed (See Figure 2, which shows no hinges for adjusting the discharge end) clearly establishes that Beck anticipates the claims as currently set forth.

On pages 6 and 7 of Applicant's remarks, Applicant argues that "those of ordinary skill in the art would readily understand that the claimed "substantially fixed height" of the discharge end precludes any adjustability of the discharge end." Examiner disagrees with this statement completely. How can any adjustability be precluded (which means at all) when the claims state a "substantially fixed height". Clearly applicant is reading limitations into the claims that is not there. Being able to fix the discharge end of the conveyor in a stable position clearly meets the limitation of being "substantially fixed height."

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

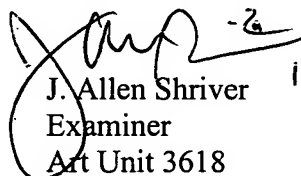
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris P. Ellis can be reached on (703) 305-0168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 -2  
J. Allen Shriver  
Examiner  
Art Unit 3618  
10/26/04

JAS

  
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